IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.9601/07
Vijay Laxmi Vs. Additional District & Session Judge, No.3, Jaipur City, Jaipur.

Date of order : 29/11/2007.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri Alok Garg for the petitioner.

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The petitioner has challenged the order dated 20.4.2007 whereby the learned trial court while accepting the application of the plaintiff respondent directed impleadment of the petitioner as defendant to the suit.

Learned counsel for the petitioner has argued that the application filed by the plaintiff was basically one under Order 6 Rule 17 CPC read with Section 151 CPC and therefore under the camouflage of amending the pleadings, new parties cannot be impleaded inasmuch as the petitioners were required to be first put those sought to

be impleaded to notice before they are impleaded as defendant in the suit. Learned counsel while citing Rule 33 of the General Rules (Civil) 1986 submitted that the application filed in the pending proceedings is required to be first served upon the parties only then it could be taken into consideration.

Having heard the learned counsel for the petitioner, I find that the application filed by the plaintiff under Order 6 Rule 17 CPC read with Section 151 CPC itself in para 2 gives the reasons for impleadment of the petitioner as defendant. It is stated therein that being a relation of first category of the family of the defendants, the petitioner was required to be impleaded as defendant but due to inadvertence her name could not be mentioned in the cause title. Mainly because the application was styled as one

under Order 6 Rule 17, the substance of the application does not change. The application was allowed by the learned trial court on payment of cost of Rs.500/- and therefore no serious prejudice is caused to the petitioner.

So far as the argument that notice should be first served on the petitioner before her impleadment and that she should have been supplied with the copy prior to consideration of the application is concerned, it should be noted that so long as a person is not impleaded as party to the pending proceedings, he cannot be considered as a party, therefore, the requirement of supplying copy of application cannot be insisted upon. It is not necessary that in case of every impleadment, more particularly when it is a suit at initial stage, the party before impleadment should have been served with

notice to show cause. The plaintiff is the master of his choice as to who should be impleaded in the suit. Moreover, when reference is made to contents of the plaint, it becomes clear that non impleadment of the petitioner due to inadvertence was sought to be rectified.

I therefore do not find any error in the order passed by the trial court.

The writ petition is dismissed.

**(MOHAMMAD RAFIQ), J.**

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